

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1914.

No. 2631.

93

CHARLES D. FOWLER, APPELLANT,

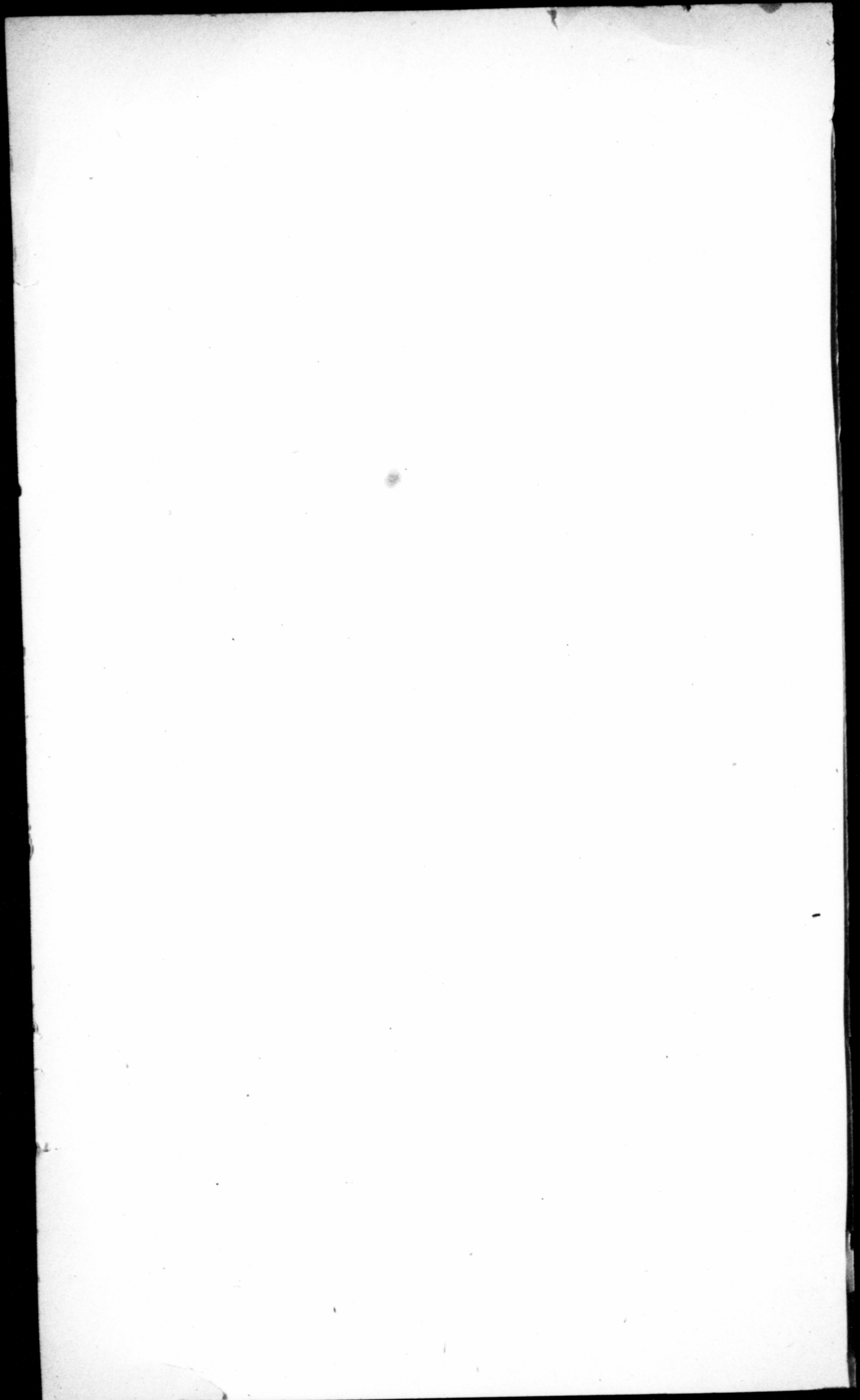
vs.

MALCOLM J. ZIMMERMAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 17, 1913.

PRINTED JANUARY 31, 1914.



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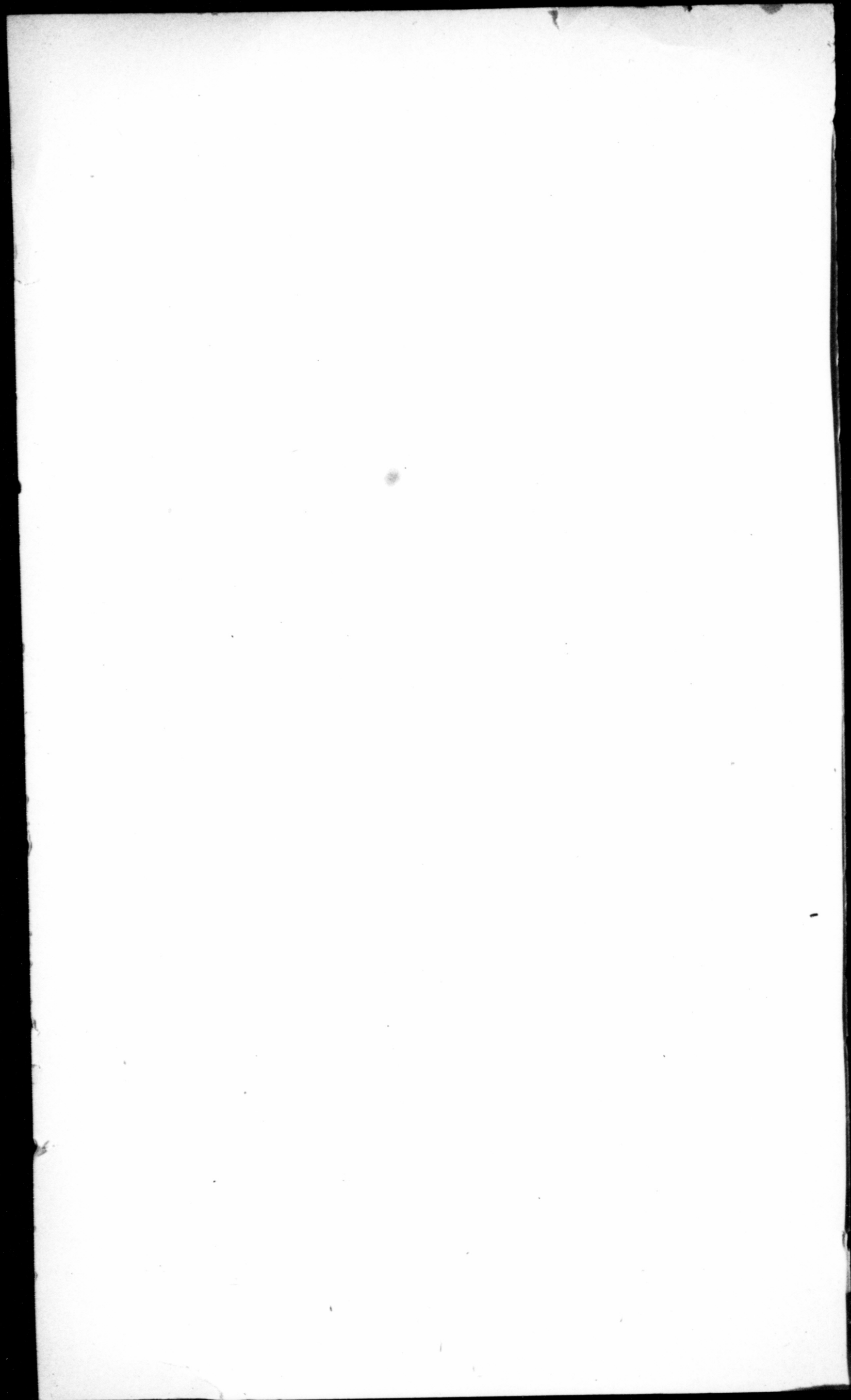
vs.

MALCOLM J. ZIMMERMAN, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2631.

CHARLES D. FOWLER, Appellant,
vs.
MALCOLM J. ZIMMERMAN.

a Supreme Court of the District of Columbia.

At Law. No. 56107.

MALCOLM J. ZIMMERMAN, Plaintiff,
vs.
CHARLES D. FOWLER, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

At Law. No. 56107.

MALCOLM J. ZIMMERMAN, Plaintiff,
vs.
CHARLES D. FOWLER, Defendant.

Memorandum.

August 18, 1913.—Appeal from Municipal Court docketed by Neale & England, Attorneys for Defendant Fowler.

Declaration.

Filed August 18, 1913.

* * * * *

The plaintiff sues the defendant for that the defendant on the 30th day of December, 1910, by his promissory note, now overdue, promised to pay to the plaintiff \$150 eighteen months after date, with interest at 6% per annum: and the plaintiff extended the time of payment to November 1st, 1912; and the defendant has not paid the same or any part thereof nor the interest thereon except up to January 1st, 1912.

1—2631a

And the plaintiff claims \$163.35 with interest thereon from the 24th day of June 1913 besides costs.

MALCOLM J. ZIMMERMAN, *Plaintiff*.

Copy.

WASHINGTON, D. C., *Dec. 30th*, 1910. No. —.

Eighteen months after date I promise to pay to the order of
Malcolm J. Zimmerman \$150.00 One hundred and fifty
2 Dollars at the Columbia National Bank of Washington, for
value received with interest at 6%.

CHAS. D. FOWLER.

Address, Washington Loan & Trust Bldg. Due —.
Interest Paid to Jan. 1/1912.
Note extended to Nov. 1-1912.

Affidavit.

DISTRICT OF COLUMBIA, ss:

I, Malcolm J. Zimmerman being duly sworn on oath depose and say that C. D. Fowler by his promissory note dated 30th December 1910 now overdue, promised to pay me \$150 eighteen months after date, with interest, but he did not pay the same or any part thereof except interest to January 1, 1912: that at his request I extended the time of payment to November 1st, 1912, when the extended note came due, but he did not pay the same; that I have often requested payment, but that he has refused to pay although there is no sufficient reason of which I am aware why he should not pay the same; and I claim of him, the said Fowler, \$163.35 with interest thereon from June 24th, 1913, which said sum is due and owing to me exclusive of all set offs and just grounds of defense.

MALCOLM J. ZIMMERMAN.

Signed and sworn to before me, a notary public in and for the District of Columbia, this 24th day of June A. D. 1913.

[SEAL.]

HORACE H. WESTCOTT,
Notary Public.

Affidavit of Defense.

Filed August 18, 1913.

* * * * *

CITY OF WASHINGTON,
District of Columbia, ss:

Chas. D. Fowler, being duly sworn, does depose and say that he has a good defense to this suit, which is as follows:

That on or about the 20th day of December 1910 he purchased of the plaintiff for the sum of \$150, the interest of the plaintiff in a certain piece of real estate in Maryland Park, Maryland, that in con-

sideration of his purchasing said real estate which the plaintiff greatly desired to dispose of the plaintiff agreed to take in payment therefor the note sued upon and in consideration of affiant paying interest thereon the plaintiff agreed that he would extend the time of payment of said note from time to time until affiant could dispose of said real estate; that affiant has not made final disposition of said real estate and in accordance with said agreement when said note became due affiant paid the interest thereon and plaintiff extended the time of payment until Nov. 1st, 1912, at which time or shortly thereafter affiant offered to pay plaintiff the interest then due and plaintiff declined to accept same stating that he did not need the money at that time, affiant requested a further extension of said note and plaintiff disregarding his agreement has failed to extend said time although affiant has not at this time finally disposed of said real estate, affiant says that he has always been ready and willing to pay the interest due upon said note, and has so advised the plaintiff,

4 affiant therefore says that the plaintiff is not entitled to recover of him on said note in this cause.

CHAS. D. FOWLER.

Subscribed and sworn to before me this 7th day of August, 1913.
[SEAL.]

CHARLES W. STEERS,
Notary Public, D. C.

Certificate of Municipal Court on Appeal.

Filed August 18, 1913.

* * * * *

Date. Proceedings.
1913.

		Plaintiff's attorney—C. Hackett.
		Defendant's attorneys—Neale and England.
June	25th.	Declaration and affidavit filed. Summons and copy
"	"	issued returnable July 9—10 A. M.
July	8th.	Summons returned "summoned as within directed."
"	9th.	Dismissed on motion of defendant, plaintiff not ap-
"	"	pearing.
"	11th.	Motion for new trial filed.
"	14th.	" " " " argued and granted.
"	"	Continued by defendant to August 1—11 A. M.
August	1st.	" " " " " 8—11 "
"	8th.	Affidavit of defense filed.
"	"	Motion for judgment on affidavit argued and granted.
"	"	Judgment for plaintiff for \$163.35 with interest from
"	"	June 24—1913 and costs.
"	12th.	Appeal, notice of, filed.
"	"	" undertaking on, filed.
"	15th.	" " " with W. W. Stewart, surety,
"	"	approved and filed.

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August 18th. Appeal, record on and papers filed with Clerk of
" " Supreme Court, D. C. and notice sent to defend-
ant's attorneys.

This is to certify, that the foregoing is a true copy of the Docket Entries and of all the proceedings had before the said Court in the above cause, and that the annexed documents are all the original papers filed in said cause.

Witness the Honorable Judges of said Court this 18th day of August A. D. 1913.

F. G. AUKAM, *Clerk*,
By BLANCHE NEFF,
Assistant Clerk.

Costs paid by Plaintiff, \$2.60.
Costs paid by Defendant, \$1.25.

Motion for Judgment.

Filed August 20, 1913.

* * * * *

Now comes the plaintiff by his attorney Chauncey Hackett and moves the court for judgment under Rule 73, with interests and costs, on account of the insufficiency of defendant's affidavit filed herein.

CHAUNCEY HACKETT,
For Plaintiff.

Messrs. Neale and England, 612 F Street, N. W.:

Please take notice that the foregoing will be for hearing on the 3rd day of October 1913, at 10 o'clock A. M. or as soon thereafter as counsel may be heard.

CHAUNCEY HACKETT,
For Plaintiff.

Service accepted this — day of August 1913.

NEALE & ENGLAND,
By C. W. S.,
For Defendant.

6 Supreme Court of the District of Columbia.

FRIDAY, October 10th, 1913.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

From Criminal Court No. 2.

Upon consideration of plaintiff's motion filed herein by his attorney for judgment on account of the insufficiency of defendant's affidavit filed herein, it is ordered that said motion be and the same is hereby granted. Wherefore, it is considered that the plaintiff herein recover of defendant and Wm. W. Stewart, surety the sum of One Hundred and Sixty-three and 35/100 Dollars (\$163.35) with interest from June 24th 1913, together with costs of suit to be taxed by the Clerk and have execution thereof.

FRIDAY, October 17th, 1913.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

From Criminal Court No. 2.

Upon consideration of defendant's motion filed herein October 13th 1913, to vacate and set aside the judgment entered herein on the tenth day of October 1913, it is ordered that said motion be and the same is hereby overruled. Thereupon, the defendant by his attorneys in open court, notes an appeal to the Court of Appeals from said judgment, and the penalty of a bond to operate as a Supersedeas, is hereby fixed in the sum of Four Hundred Dollars.

Memorandum.

October 31, 1913.—Appeal bond approved and filed.

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Assignment of Errors.

Filed November 28, 1913.

* * * * *

Comes now the defendant in the above entitled cause, an- appellant to the Court of Appeals, and assigns the following errors upon his appeal.

The Court Erred; First in holding upon the face of the record that the note sued upon was not collateral to the agreement mentioned in the defendant's affidavit.

Second. The Court Erred in holding that a pre-existing agreement could not be made the subject of a defense to a promissory note, which said note as shown by the defendant's affidavit, was collateral to said pre-existing agreement.

Third. The Court Erred in holding that the defendant's affidavit was insufficient in law under the terms of the 73rd rule, to allow him to go to the jury upon his defense.

Fourth. Upon the face of the whole record the Court erred in entering judgment for the plaintiff.

NEALE & ENGLAND,
Attorneys for Appellant.

Designation of Record.

Filed November 28, 1913.

* * * * *

The clerk of this Court will please include in the transcript of the record of the above entitled cause on appeal to the Court of Appeals, the following papers and proceedings.

First. The memorandum docketing the appeal from the Municipal Court to the Supreme Court of the District of Columbia and

8 the appearance of Neale and England for the defendant appellant.

Second. The appearance of Chauncey Hackett for the plaintiff appellant.

Third. The declaration and affidavit of the plaintiff.

Fourth. The plea and affidavit of the defendant.

Fifth. The transcript of the docket entries of the Municipal Court.

Sixth. The plaintiff's motion for judgment.

Seventh. The judgment entered on October 10, 1913, by Mr. Justice Wright in the Supreme Court of the District of Columbia.

Eighth. Memorandum of noting appeal in open court and order in fixing amount of appeal bond.

Ninth. Memorandum of the filing and approval of appeal bond on appeal to the Court of Appeals.

Tenth. Assignment of errors filed herein by the appellant on this designation.

NEALE & ENGLAND,
Attorneys for Defendant Appellant.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 8, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 56107 At Law, wherein Malcolm J. Zimmerman is Plaintiff and Charles D. Fowler is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 3rd day of December, 1913.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2631. Charles D. Fowler, appellant, vs. Malcolm J. Zimmerman. Court of Appeals, District of Columbia. Filed Dec. 17, 1913. Henry W. Hodges, clerk.

